

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

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|---------------------------|---|----------------------------|
| MARY ANNE SIMPSON, |) | |
| |) | DOCKET NO.: IT-2003-5 |
| Appellant, |) | |
| |) | |
| -vs- |) | FACTUAL BACKGROUND, |
| |) | CONCLUSIONS OF LAW, |
| THE DEPARTMENT OF REVENUE |) | ORDER and OPPORTUNITY |
| OF THE STATE OF MONTANA, |) | <u>FOR JUDICIAL REVIEW</u> |
| |) | |
| Respondent. |) | |

The above-entitled appeal was heard on briefs in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board) dated May 3, 2004.

Ms. Simpson is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence, the Board finds that the decision of the Department of Revenue shall be affirmed.

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STATEMENT OF THE ISSUE

The issue in this case is a dispute concerning the DOR's authority to confiscate Ms. Simpson's individual income tax refund from tax year 2001 in order to offset the debt she owed as result of the Commission on Practice findings. The Commission assessed hearing costs to Ms. Simpson as a result of contested disciplinary proceedings against her. The Montana Supreme Court approved those assessed costs and entered a judgment directing her to pay the \$2,338.04 in Commission hearing costs on May 31, 2001.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter. All parties were afforded opportunity to present evidence. The briefing schedule for written submissions was established by Order dated May 3, 2004. Final submissions were due on June 8, 2004.

2. On May 31, 2001, the Montana Supreme Court issued an order for Ms. Simpson to pay the amount of \$2,338.04. This amount represented the costs of the Commission's proceedings regarding Ms. Simpson. A copy of the order was sent to the DOR.

3. On March 18, 2002, the DOR notified Ms. Simpson that the Supreme Court had forwarded her liability to the DOR for collection. This correspondence indicated that she should contact the DOR if she felt she not owe the debt; otherwise, she was to remit payment for the debt within ten days.

4. On March 6, 2003, a Notice of Offset was sent to Ms. Simpson, informing her that the offset resulted from the confiscation of a refund for an individual income tax return. The confiscated refund (\$96.00) was applied to the debt owed by the Court.

5. On March 7, 2003, Ms. Simpson sent a letter to the DOR contesting the offset. The letter expressed her belief that the offset was unfair and that, in her opinion, there was no debt to the Court.

6. The March 7, 2003 letter also contained complaints regarding the Court's alleged failure to properly notify Ms. Simpson and denial of due process. She cited Section 17-4-105 (3) (c), MCA, as the basis for this complaint.

7. On May 20, 2003, Ms. Simpson sent a letter to Howard Heffelfinger, the DOR's Dispute Resolution Officer, requesting a hearing.

8. An initial conference was held on June 17, 2003 with DOR Hearing Examiner Patrick McKenna presiding. The DOR was represented by Russ Hyatt, bureau chief, Accounts Receivable and Collections Bureau. Ms. Simpson appeared on her behalf. The matter was then heard on written submissions.

9. Mr. McKenna issued the DOR's Findings of Fact and Conclusions of Law on October 14, 2003, ordering that the confiscation of the subject individual income tax refund to offset a debt owed to the Supreme Court was proper.

10. Ms. Simpson appealed that decision to this Board on November 12, 2003, stating that she requests mediation, and resolution of the amount in dispute.

11. This Board set the appeal for hearing on February 25, 2004 in Helena.

12. On February 11, 2004, the DOR filed a Motion to Dismiss For Failure to State a Claim Upon Which Relief Can Be Granted.

13. On February 24, 2004, Ms. Simpson filed a Motion for Enlargement of Time to respond to the DOR's Motion to Dismiss and requesting that the February 25 hearing dated be vacated due to her medical ailments.

14. On February 24, 2004, the Board issued an order vacating the February 25 hearing and allowing Ms. Simpson until March 8, 2004 in which to file her response to the DOR's Motion to Dismiss.

15. On March 4, 2004, Ms. Simpson again asked for an enlargement of time in which to file her response to the DOR's Motion to Dismiss. Due to medical problems, she requested an extension until April 15, 2004.

16. By order dated March 5, 2004, this Board granted the Ms. Simpson's Motion for Enlargement of Time until April 15, 2004.

17. On April 19, 2004, Ms. Simpson filed her response to the DOR's Motion to Dismiss. In her response, Ms. Simpson asked this Board to mediate the contested \$2,338.04 in Commission hearing costs, disputing its accuracy, and to issue its finding that the debt resulting from the contested disciplinary investigation by the Commission on Practice was invalid because the Commission had not conducted the case in accordance with the Montana Administrative Procedures Act.

18. On May 3, 2004, this Board issued an Order denying the DOR's Motion to Dismiss and establishing a briefing

schedule for this appeal. Final simultaneous briefs were due on or before June 8, 2004.

TAXPAYER'S CONTENTIONS

Ms. Simpson contends that her dispute concerning the confiscated 2001 state tax refund hinges on the Montana Supreme Court's failure to follow the law in providing notice and a dispute resolution as required by Section 15-11-211, MCA. She also disputes the appropriateness of the hearing costs. She disputes, among other items, the amount of time and expense one might reasonably expect would be required to inquire into her forwarding addresses since 1995 and her continuing legal education and activities during 1995-2000 (the subject of the contested disciplinary proceedings before the Commission on Practice).

Ms. Simpson states that she has consistently requested that the Montana Supreme Court be included in DOR conferences to determine if a settlement of the amount was possible or if a payment schedule could be arranged, or a correction of the costs, if the subject matter of the dispute was not resolved by hearing.

She requested this Board to order one of its staff members, or a staff member of the DOR, to inquire about the

propriety of the costs concerning travel and expenses of the Commission on Practices and "to seek a compromise of the claim on equitable grounds."

She also cited several medical conditions and her diminished earning capacity, including a medical doctor's note dated May 17, 2004, excusing her from work until May 24, 2004.

DOR'S CONTENTIONS

Mr. Prichard, DOR tax counsel, argued that, since Ms. Simpson has failed to clearly articulate her request and grounds for relief, that the DOR will stand by the legal and factual analysis presented in its Motion to Dismiss for Failure to State a Claim Upon Which Relief can Be Granted filed on February 11, 2004. The Board also relied upon the record from the DOR hearing examiner, Patrick McKenna, who presided over the June 17, 2003 initial conference and issued the DOR's Findings of Fact and Conclusions of Law in this matter, which are discussed in Findings 2 through 9 above.

BOARD DISCUSSION

This Board will not second-guess the appropriateness of travel and expenses incurred by the Commission on Practice

related to its contested disciplinary proceedings against Ms. Simpson.

§17-4-105 (2), MCA empowers the DOR to offset any amount due an agency from a person, including refunds of taxes owed to that person.

The Montana Supreme Court entered its judgment and order against Mary Anne Simpson on May 31, 2001, in which it ordered her to pay the costs associated with Commission on Practice proceedings investigating her conduct as a lawyer. The Supreme Court forwarded her liability to the DOR for collection in the amount of \$2,338.04. She was provided ample opportunity to contest this action, which she has done.

This Board also lacks authority to overrule a judgment and order of the Montana Supreme Court.

CONCLUSIONS OF LAW

1. **§15-2-302, MCA. Direct appeal from department decision to state tax appeal board - hearing.** (2)(a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision.

2. **§17-4-104, MCA.** prescribes that the DOR shall assist other State agencies in the collection of accounts owing to

them, provided the agencies request assistance and follow procedures delineated in this section. In pertinent part:

[the] department shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to the department's satisfaction . . .

3. **§17-4-105 (2), MCA.**, states, in part:

The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing pursuant to Section 15-1-211, MCA. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant.

4. This Board has no jurisdiction on the issue of the appropriateness of the Commission on Practice's hearing costs or on the Montana Supreme Court's authority to enter a judgment and order relating to these costs resulting from a Commission on Practice proceeding.

5. The appeal of the taxpayer is denied and the decision of the Department of Revenue is affirmed.

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(S E A L)

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of June, 2004, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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